IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 17834 of 2004(W)

AGAINST THE ORDER DATED 23/03/2004 IN EP98/99 IN OS.162/1997 of MUNSIFF COURT, TIRUR

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PETITIONER:

M.K.GANDADHARAN, S/O. KUNHIRAMA MARAR
SELECT TIMES 6/250 BUS STAND APPROAH ROAD,
TIRUR -1.

BY ADV. SRI.A.KRISHNAN

RESPONDENTS:

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1. PAYYERI MUHAMMADALI,
S/O. SAIDALAVI, 6/260 STAR TIMES BUS STAND
APPROAH ROAD, TIRUR.

2. PARAPPURATHU ISMAYIL S/O. SAIDALIKUTTY
T.S.ROAD, KOTT, TIRUR-1.

3. THE NEDUNGADI BANK LIMITED
2.PUNJAB NATIONAL BANK BY ITS MANAGER,
TIRUR BRANCH.

R3 BY ADV. SRI.P.RADHAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/05/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 17834 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE ORDER DT.23.03.2004.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 17834 OF 2004

Dated this the 24th day of May, 2007

JUDGMENT

The order of the execution court directing arrest and detention of the writ petitioner who was the first judgment debtor is under challenge. Ext.P1 is the order and I find that the same was passed by the learned Munsiff after evaluating the testimonies of PW1-decree holder and also RW1-the petitioner. Exts.A1 to A3 wealth statements submitted by the petitioner were not relied on by the learned Munsiff. The learned Munsiff relied rather on the admissions made by the petitioner in his testimony as PW1.

2. Having carefully gone through Ext.P1, I am unable to agree with Mr.A.Krishnan, learned counsel for the petitioner that Ext.P1 is so wholly unreasonable as to warrant correction under supervisory jurisdiction of this Court under Article 227 which is visitorial in nature. While admitting this Writ Petition, this Court granted stay only subject to the condition that the petitioner remits a sum of Rs.3,000/-towards the debt. The above condition has been complied with. Even as I find no infirmity about Ext.P1 within the contours of the jurisdiction under Article 227, I feel that the petitioner can be permitted to pay off the debt in equal monthly instalments. According to Mr.Krishnan, the balance

amount inclusive of interest under the decree will be around Rs.20,000/-. It is submitted on behalf of Mr.P.Radhakrishnan, counsel for 3rd respondent that the amount will be much more. Whatever that be the writ petition itself will stand disposed of issuing the following directions:

The order of stay presently passed will continue only if the petitioner remits on the 15th of every month commencing from the 15th of June 2007 a sum of Rs.3,000/-. In the event of any default in the matter of payment of installment on the due dates, the petitioner will forfeit the installment facility. Once it is seen that the petitioner has remitted at least a total amount of Rs.15,000/- by installments after 15.06.07, the petitioner is permitted to file an application before the court below for waiving the interest portion of the liability and for recording full satisfaction. the court below will take a fair decision on the application with notice to the Bank and after considering its objections regarding the correct balance.

PIUS C. KURIAKOSE, JUDGE

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